

APPENDIX B-1

**NONEXCLUSIVE LICENSE AND OPERATING CONTRACT
(SAMPLE ONLY)**

NONEXCLUSIVE LICENSE AND OPERATING AGREEMENT

THIS AGREEMENT is made this ____nd day of _____, 2003 by and between the Gregory Canyon Ltd., LLC, a California limited liability with its principal place of business at Suite 2360, Three Embarcadero Center, San Francisco, CA 94111 ("Licensor") and _____, a _____ corporation with its principal place of business at _____ ("Licensee"), in consideration of the promises made herein and intending to be legally bound, as follows:

RECITALS

WHEREAS, Licensor is the owner of that certain real property located within the County of San Diego and more particularly described on the map attached hereto as Exhibit "A" (the "Property"); and

WHEREAS, Licensor intends to use the Property for operation of a solid waste disposal facility commonly known as the Gregory Canyon Landfill ("the Facility"); and

WHEREAS, Licensee has substantial experience in the operation of solid waste disposal facilities and has the ability to carry out the operation of the Facility; and

WHEREAS, Licensee desires to assume Licensor's operations at the Facility under the terms and conditions set forth herein; and

WHEREAS, Licensor is willing to grant Licensee a nonexclusive license to use the Property and conduct operations at the Facility at the times and upon the conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Definitions.

- 1.1. "Acceptable Waste" means all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection and which are normally disposed of, or collected from residential (single family or multi-family), commercial, industrial, governmental and institutional establishments, and which are acceptable for disposal at the Facility in accordance with Applicable Law.
- 1.2. "Agreement" means this Nonexclusive License and Operating Agreement between Licensor and Licensee, as it may be amended or modified from time to time.
- 1.3. "Applicable Law" means RCRA, CEQA, any Legal Entitlement and any other rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management, operation or maintenance of facilities used for the transportation, handling, treatment or disposal of Acceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages).

- 1.4. "Facility" means the Gregory Canyon Landfill.
- 1.5. "Property" means that certain real property located within the County of San Diego located at _____, as described on the map attached hereto as Exhibit A.
2. Grant of Nonexclusive Revocable License. During the term of this Agreement, Licensors hereby grants to Licensee a nonexclusive revocable license to the Property, subject to all of the terms and conditions herein, and an exclusive right to operate the Facility.
3. Permitted Uses.
- 3.1. Use of Property. During the term of this Agreement, the Property may be occupied and used by Licensee, its contractors, and subcontractors, for purposes, including, but not limited to the ingress and egress of employees, equipment and/or Acceptable Waste, the storing of materials and equipment; the operation of the Facility, and other encroachments on the Property necessary to and related to the operation, repair and maintenance of the Facility.
- 3.2. Use of Name. During the term of this Agreement, Licensee shall be authorized to use the name "Gregory Canyon Landfill" for the sole purpose of identifying the Facility and its operations, but for no other business or purpose.
4. Assignment; Sub-Licenses. It is expressly agreed that Licensee shall not have the right to assign or sub-license its rights under this Agreement without the prior consent of Licensors, which shall not be withheld unreasonably. Notwithstanding the above, Licensee may assign this Agreement to an affiliate without the consent of Licensee.
5. Licensee has no Interest or Estate. Licensee agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Property by virtue of this License or Licensee's occupancy or use hereunder.
6. Personal License Only. It is agreed between Licensors and Licensee that this license is personal to Licensee and, except as provided in Section 4 above, shall not inure to the successors or assigns of Licensee.

7. Term.

- 7.1. This Agreement and the license granted hereunder shall be for a term commencing on _____ and expiring on _____.
- 7.2. Notwithstanding the above, either party shall have the right to revoke this Agreement for cause arising from a breach of the terms and conditions of this Agreement, upon thirty (30) days written notice to the other and reasonable opportunity to cure, which may extend beyond the thirty (30) day notice period where the breaching party initiates the cure within such period and thereafter diligently pursues completion thereof. In the event of a termination for cause, Licensee shall be obligated to pay Licensors pursuant to Section 13 up to and including the date of termination. In addition, in the event of a breach, the non-breaching shall have the right to pursue all remedies and damages permitted under this Agreement and the laws of Arizona.
- 7.3. Notwithstanding the above, should Licensee, by force of any law, ruling or regulation, at any time during the term hereof, be ordered or required to do any act relative to this Agreement which substantially impairs or materially changes the Licensee's ability to perform under this Agreement, then Licensee may notify Licensors of this condition and may terminate this Agreement upon providing at least sixty (60) days advance written notice of termination to Licensors. Nothing in this Agreement shall prohibit either party from obtaining or seeking to obtain modification, reversal or repeal of such law, ruling or regulation or restrict either party's right to legally contest the validity of such law, ruling or regulation. Licensee shall not be considered in breach of this Agreement during such time as Licensee is contesting or appealing any notice of violation, ordinance, rule, regulation, ruling or law.
- 7.4. The provisions of Sections 9, 14, 15 and 16 shall survive the revocation, expiration or other termination of the license or this Agreement until such time as the Property has been fully restored in accordance with Section 9 and any all liens discharged in accordance with Section 15, after which time Sections 14 and 16 only shall survive.
8. No Waste. Licensee shall not cause, do or suffer any permanent waste, disfigurement or injury to the Property or any improvements thereon during the term of this Agreement.
9. Restoration of Property, Removal of Property, and Return of Equipment.
- 9.1. Immediately following the expiration of the term of the license, and/or upon revocation, surrender or other termination thereof, Licensee shall peaceably and immediately remove any and all personal property from the Property and surrender the Property to Licensors in as good a condition as the Property was in at the time of Licensee's entry of the Property, normal wear and tear excepted. Licensee agrees that Licensors shall obtain title to all structures and improvements existing upon the Property at the date of revocation, expiration or other termination of the license.
- 9.2. If Licensee shall fail to do so within thirty (30) days after the time of any revocation, expiration other termination of the license, however brought about, Licensors shall have the right to: (i) remove and store any of Licensee's personal property at Licensee's sole cost

and expense; and (ii) restore the Property at Licensee's sole cost and expense. Licensee shall pay to Licensors the aforementioned costs and expenses upon demand.

10. Obligations of Licensee. Licensee shall be responsible at its sole expense for all of the following activities related to the use of the Property:

- 10.1. Conducting the day to day operation of the Facility in accordance with the specifications set forth in Exhibit "B" hereto.
- 10.2. Furnish all necessary labor, materials, fuel, tools and equipment necessary for the operation of the Facility.
- 10.3. Obtaining and maintaining the insurance coverages required pursuant to Section 17 hereof and the Performance Bond and the required pursuant to Section 18.
- 10.4. Placing signage at the Property in the name of "Gregory Canyon Landfill", unless otherwise directed by Licensors.
- 10.5. Timely paying all property taxes due and owing with respect to the Property as required by the Lease, or otherwise.
- 10.6. Creating a trust fund, for the benefit of Licensors, to be used for the sole purpose of implementing closure and post-closure activities at the Facility. Licensee shall make payments to the trust fund on a per ton basis for each ton of Acceptable Waste received for disposal, determined by dividing the estimated cost of closure and post-closure activities by the amount of the remaining permitted disposal capacity at the Facility. This determination shall be revised annually each July 1 during the term of this Agreement. During the term of this Agreement, until the trust fund has assets in the amount of the estimated cost of closure and post-closure activities, Licensee shall provide one or more additional closure/post-closure financial assurance mechanisms for the differential between the estimated cost of closure and post-closure activities and the amount in the trust fund, to the extent required by Applicable Law.
- 10.7. Operating the gate house and collecting all fees received for the disposal of Acceptable Waste. Licensee shall be entitled to all proceeds received from the operation of the Facility.
- 10.8. Complying with Applicable Law and cooperating with Licensors to maintain all permits, licenses, or approvals (the "Approvals") which are required for the use of the Facility.
- 10.9. Payment of all utilities.

11. Risk of Loss. Subject to the requirements of Section 14 below, Licensee shall bear the entire risk for any loss and damage to the Facility, any part thereof, or any equipment located on the Property. In addition, no loss or damage to the Facility, any part thereof, or any equipment located on the Property, except where caused by the negligence of Licensors, shall impair any obligation of Licensee under this Agreement, which shall continue in full force and effect.

12. Obligations of Licensors. Licensors shall:

12.1. Maintaining the Approvals in the name of Licensors.

12.2. Implementing all closure and post-closure activities as required by Applicable Law. In so doing, Licensors may utilize the assets of the trust fund created by Licensee for this purpose.

13. Operating Fee. In consideration of Licensee conducting operations at the Facility, Licensors shall pay Licensee the following fee: (TBD)

14. Indemnification.

14.1. Licensee agrees to defend, indemnify and hold Licensors harmless and assume full responsibility for payment of all State and Federal taxes for unemployment insurance, workers' compensation, old age pensions or under any social security laws or law, as to all employees of Licensee engaged in the performance of this Agreement.

14.2. Licensee agrees to defend, indemnify and hold Licensors harmless for losses, damages, injuries or death that arise in connection with the acts or omissions of Licensee in the performance of its duties under this Agreement, or a violation of applicable laws and regulations.

14.3. Licensee agrees to defend, indemnify and hold Licensors harmless for any losses, injuries, or claims (including but not limited to Removal or Remedial actions brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., or any similar state or local law) that arise in connection with the release of Hazardous Substances (as that term is defined under 42 U.S.C. Section 9601(14) or any similar state or local law) from the Facility caused by or arising from Licensee's operation of the Facility.

14.4. Licensors agree to defend, indemnify and hold Licensee harmless for damages, injuries or death that arise in connection with the acts or omissions of Licensee in the performance of its duties under this Agreement, or a violation of applicable laws and regulations.

15. Liens. During the term of this Agreement, Licensee shall not permit to remain and shall promptly discharge, at its sole cost and expense, all mechanics', laborers', and materialmen's liens, encumbrances and charges (other than liens, encumbrances and charges created or suffered by Licensors or any person acting for or on behalf of Licensors) at the Property or on any part of the same, provided that the existence of any mechanics', laborers', or materialmen's liens or rights incident thereto shall not constitute a violation of this section if payment is not yet due as provided in the contract which is the basis of the same. Licensee shall have the right to contest with due diligence the validity or amount of any lien or claimed lien, if Licensee procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to the amount of the claim of lien. Such bonds provide for the payment of any sum that the claimant may recover with respect to the claim in question, together with costs of suit to the extent that such claim recovers the same. On any adverse,

final determination of the lien or claim for lien, Licensee shall immediately pay any judgment rendered with all proper costs and charges and shall have the lien released or judgment satisfied at Licensee's sole cost and expense and, if Licensee fails to do so, Licensors may in its sole discretion pay any such final judgment. If Licensee fails to record a lien release bond as provided in this section and such failure is not cured by Licensee within a reasonable time after demand by Licensors, Licensors may contest the validity or amount of any such lien or claim of lien or settle or compromise the same without inquiring into the validity of the claim or the reasonableness of the amount of the same.

16. Insurance.

16.1. Licensee agrees to obtain and maintain and to furnish to Licensors certificates attesting to the existence of, the following insurance to protect against any losses or damages occurring the period of Licensee's use of the Property:

<u>Coverage</u>	<u>Limits of Liability</u>
Workmen's Compensation	Statutory
Employer's Liability	\$500,000 Each Occurrence
General Liability, Including Bodily Injury, Property Damage and Contractual Liability	\$2,000,000 Combined Single Limit, Each Occurrence
Automobile Liability, Including Bodily Injury and Property Damage	\$2,000,000 Combined Single Limit, Each Occurrence

16.2. Each such certificate shall contain a statement of the insurer's obligation to notify the party to whom the certificate is addressed at least thirty (30) days prior to cancellation of any policy covered thereunder.

16.3. Licensee's General Liability and Automobile Liability policies shall name Licensors as an additional insured.

17. General Conditions.

- 17.1. Uncontrollable Circumstances. Neither party hereto shall be liable for its failure to perform in whole or in part hereunder due to contingencies beyond its reasonable control, including, but not limited to, strikes, labor unrest, riots, war, fire, acts of God, compliance with any law, regulation order or action, whether valid or invalid, of the United States of America or any other governmental body or any instrumentality thereof, whether now existing or hereafter created.
- 17.2. Independent Contractor. The work and labor herein provided for shall be performed and furnished by the parties as independent contractors and under the sole supervision, management, direction and control of each party in accordance with the terms and conditions of this Agreement. This Agreement shall not be construed to create a partnership, joint venture or employment relationship between the parties.
- 17.3. Waivers. Failure by Licensor to complain of any act or omission on the part of Licensee, no matter how long the same shall continue, shall not be a waiver by Licensor of its rights hereunder. No waiver by Licensor, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or consent to any subsequent breach of the same or any other provision.
- 17.4. Sole and Only Agreement. This Agreement constitutes the sole and only Agreement between the parties hereto with respect to the services herein described and correctly sets forth the obligations of each party. Any representations or agreements not specifically contained herein are null and void.
- 17.5. Amendment. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly authorized and executed by both parties.
- 17.6. Law to Govern. This Agreement shall be construed according to, and the obligations of the parties hereunder governed by, the laws of the State of California..
- 17.7. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.
- 17.8. Notices. Any notice required or permitted by this Agreement shall be in writing and sufficiently given if delivered in person, delivered via facsimile, or sent by certified or registered mail, postage prepaid, to the notice address of the respective parties set forth in this Agreement. Changes in the respective addressees to which such notices may be directed may be made from time to time by any party by notice to the other party. The present addresses of the parties are:

Licensor:
Gregory Canyon, Ltd. LLC
Suite 2360
Three Embarcadero Center
San Francisco, CA 94111
Attn: Jerry Riessen
Telephone: (415) 391-2833
Facsimile: (415) 788-2030

Licensee:

Telephone: _____
Facsimile: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates opposite their respective signatures:

GREGORY CANYON LTD., LLC

Date: _____ By: _____

Title: _____

Date: _____ By: _____

Title: _____

EXHIBIT "A"
PROPERTY DESCRIPTION

SAMPLE

EXHIBIT "B"

PERFORMANCE SPECIFICATIONS

1. No open burning shall be permitted and Licensee shall use all reasonable means to prevent said burning. Should any such fires occur, it shall be the responsibility of the Licensee to use all available methods to control such fires whether on the surface or underground.
2. Maximum densification of deposited refuse shall be accomplished through compaction with Licensee's equipment and employing methods used in good sanitary landfill operations.
3. The working face of the fill shall be kept as narrow as is consistent with proper operation of collection vehicles and equipment, for minimal surface area and exposure time of waste material.
4. Roads shall be maintained by Licensee within the Facility. Roads within the Facility shall be planned and constructed for use during wet weather. This may require stockpiling of materials and temporary road construction for access to the dumping area.
5. Effective steps shall be taken by Licensee to control blowing papers at the disposal site by constructing and maintaining movable fencing adjacent to areas in use, and/or other facilities to adequately control paper at all times, whether refuse-covered or not.
6. A gate is provided at the entrance to the disposal site. It shall be closed and locked at the time designated for closing the disposal site. It is the responsibility of the Licensee to enforce this provision.
7. Scavenging shall not be permitted by the public, and signs to this effect shall be provided by Licensee.
8. Control of birds, rodents and insects shall be maintained. Approved pesticides and poisons may be used for such purposes to control these pests, whenever necessary. Use of pesticides and poisons shall be regulated so percolation of runoff through natural drainages from the immediate area of use will be precluded.
9. Sufficient equipment shall be available at all times to prevent delay in refuse compaction and covering because of breakdowns or peak loads.
10. Licensee shall provide for on-site drainage of the fill site at all times.
11. Records of all operating factors necessary to determine rate of fill, settlement, availability of soil cover, equipment and personnel operations at the site shall be maintained by the Licensee. Licensee shall have a minimum of one employee on duty at the main entrance at all times to collect and receipt for charges, maintain the records, and operate the scale. There shall be sufficient other employees on duty at all times to direct traffic, control dumping and operate the disposal site, including the equipment therein, to insure that the operations hereunder shall be in accordance with these specifications.
12. Licensee shall maintain some method to apply water or a dust palliative, or both, for the alleviation or prevention of dust nuisance that may occur during his operations.
13. Cracks, depressions, and erosion of the surface and side slopes of the completed fill areas will be promptly repaired.
14. All persons using the disposal facility shall be furnished a receipt therefor. The furnishing, printing and handling and form of the receipts shall be the responsibility of the Licensee.

15. The Facility shall be open to the public for not less than the days and hours provided below, except Holidays.

Weekdays	=====
Saturday	=====

SAMPLE